

(5) A brief narrative history of carrier operations in the area, and an explanation of what, if any, changes are contemplated as a result of the proposed action;

(6) A brief summary of documents in the carrier's possession, such as engineering drawings, that might be useful in documenting a structure that is found to be historic;

(7) An opinion (based on readily available information in the railroad's possession) as to whether the site and/or structures meet the criteria for listing on the National Register of Historic Places (36 CFR 60.4), and whether there is a likelihood of archeological resources or any other previously unknown historic properties in the project area, and the basis for these opinions (including any consultations with the State Historic Preservation Office, local historical societies or universities);

(8) A description (based on readily available information in the railroad's possession) of any known prior subsurface ground disturbance or fill, environmental conditions (naturally occurring or manmade) that might affect the archeological recovery of resources (such as swampy conditions or the presence of toxic wastes), and the surrounding terrain.

(9) Within 30 days of receipt of the historic report, the State Historic Preservation Officer may request the following additional information regarding specified nonrailroad owned properties or groups of properties immediately adjacent to the railroad right-of-way: photographs of specified properties that can be readily seen from the railroad right-of-way (or other public rights-of-way adjacent to the property) and a written description of any previously discovered archeological sites, identifying the location and type of the site (*i.e.*, prehistoric or native American).

(e) Any of these requirements may be waived or modified when the information is not necessary to determine the presence of historic properties and the effect of the proposed action on them.

(f) Historic preservation conditions imposed by the Commission in rail abandonment cases generally will not extend beyond the 330-day statutory

time period in 49 U.S.C. 10904 for abandonment proceedings.

§ 1105.9 Coastal Zone Management Act requirements.

(a) If the proposed action affects land or water uses within a State coastal zone designated pursuant to the Coastal Zone Management Act (16 U.S.C. 1451 *et seq.*) applicant must comply with the following procedures:

(1) If the proposed action is listed as subject to review in the State's coastal zone management plan, applicant (with, or prior to its filing) must certify (pursuant to 15 CFR 930.57 and 930.58) that the proposed action is consistent with the coastal zone management plan.

(2) If the activity is not listed, applicant (with, or prior to its filing) must certify that actual notice of the proposal was given to the State coastal zone manager at least 40 days before the effective date of the requested action.

(b) If there is consistency review under 15 CFR 930.54, the Commission and the applicant will comply with the consistency certification procedures of 15 CFR 930. Also, the Commission will withhold a decision, stay the effective date of a decision, or impose a condition delaying consummation of the action, until the applicant has submitted a consistency certification and either the state has concurred in the consistency certification, or an appeal to the Secretary of Commerce (under 15 CFR 930.64(e)) is successful.

§ 1105.10 Commission procedures.

(a) *Environmental Impact Statements.*

(1) *Prefiling Notice.* Where an environmental impact statement is required or contemplated, the prospective applicant must provide the Section of Energy and Environment with written notice of its forthcoming proposal at least 6 months prior to filing its application.

(2) *Notice and Scope of EIS.* When an Environmental Impact Statement is prepared for a proposed action, the Commission will publish in the FEDERAL REGISTER a notice of its intent to prepare an EIS, with a description of the proposed action and a request for written comments on the scope of the

EIS. Where appropriate, the scoping process may include a meeting open to interested parties and the public. After considering the comments, the Commission will publish a notice of the final scope of the EIS. If the Environmental Impact Statement is to be prepared in cooperation with other agencies, this notice will also indicate which agencies will be responsible for the various parts of the Statement.

(3) *Notice of Availability.* The Commission will serve copies of both the draft Environmental Impact Statement (or an appropriate summary) and the full final Environmental Impact Statement (or an appropriate summary) on all parties to the proceeding and on appropriate Federal, State, and local agencies. A notice that these documents are available to the public will be published (normally by the Environmental Protection Agency) in the FEDERAL REGISTER. (Interested persons may obtain copies of the documents by contacting the Section of Energy and Environment.)

(4) *Comments.* The notice of availability of the draft Environmental Impact Statement will establish the time for submitting written comments, which will normally be 45 days following service of the document. When the Commission decides to hold an oral hearing on the merits of a proposal, the draft Environmental Impact Statement will be made available to the public in advance, normally at least 15 days prior to the portion of the hearing relating to the environmental issues. The draft EIS will discuss relevant environmental and historic preservation issues. The final Environmental Impact Statement will discuss the comments received and any changes made in response to them.

(5) *Supplements.* An Environmental Impact Statement may be supplemented where necessary and appropriate to address substantial changes in the proposed action or significant new and relevant circumstances or information. If so, the notice and comment procedures outlined above will be followed to the extent practical.

(b) *Environmental Assessments.* In preparing an Environmental Assessment, the Section of Energy and Environment will verify and independently

analyze the Environmental Report and/or Historic Report and related material submitted by an applicant pursuant to sections 1105.7 and 1105.8. The Environmental Assessment will discuss relevant environmental and historic preservation issues. SEE will serve copies of the Environmental Assessment on all parties to the proceeding and appropriate federal, state, and local agencies, and will announce its availability to the public through a notice in the FEDERAL REGISTER. In the case of abandonment applications processed under 49 U.S.C. 10903, the availability of the Environmental Assessment must be announced in the applicant's Notice of Intent filed under 49 CFR 1152.21. The deadline for submission of comments on the Environmental Assessment will generally be within 30 days of its service (15 days in the case of a notice of abandonment under 49 CFR 1152.50). The comments received will be addressed in the Commission's decision. A supplemental Environmental Assessment may be issued where appropriate.

(c) *Waivers.* (1) The provisions of paragraphs (a)(1) or (a)(4) of this section or any ICC-established time frames in paragraph (b) of this section may be waived or modified where appropriate.

(2) Requests for waiver of § 1105.10(a)(1) must describe as completely as possible the anticipated environmental effects of the proposed action, and the timing of the proposed action, and show that all or part of the six month lead period is not appropriate.

(d) *Third-Party Consultants.* Applicants may utilize independent third-party consultants to prepare any necessary environmental documentation, if approved by SEE. The environmental reporting requirements that would otherwise apply will be waived if a railroad hires a consultant, SEE approves the scope of the consultant's work, and the consultant works under SEE's supervision. In such a case, the consultant acts on behalf of the Commission, working under SEE's direction to collect the needed environmental information and compile it into a draft EA or draft EIS, which is then submitted to SEE for its review, verification, and

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approval. We encourage the use of third-party consultants.

(e) *Service of Environmental Pleadings.* Agencies and interested parties sending material on environmental and historic preservation issues directly to the Commission should send copies to the applicant. Copies of Commission communications to third-parties involving environmental and historic preservation issues also will be sent to the applicant where appropriate.

(f) *Consideration in Decisionmaking.* The environmental documentation (generally an EA or an EIS) and the comments and responses thereto concerning environmental, historic preservation, CZMA, and endangered species issues will be part of the record considered by the Commission in the proceeding involved. The Commission will decide what, if any, environmental or historic preservation conditions to impose upon the authority it issues based on the environmental record and its substantive responsibilities under the Interstate Commerce Act. The Commission will withhold a decision, stay the effective date of an exemption, or impose appropriate conditions upon any authority granted, when an environmental or historic preservation issue has not yet been resolved.

(g) *Finding of No Significant Impact.* In all exemption cases, if no environmental or historic preservation issues are raised by any party or identified by SEE in its independent investigation, the Commission will issue a separate decision making a Finding of No Significant Impact ("FONSI") to show that it has formally considered the environmental record.

[56 FR 36105, July 31, 1991; 56 FR 49821, Oct. 1, 1991]

§ 1105.11 Transmittal letter for Applicant's Report.

A carrier shall send a copy of its Environmental and/or Historic Report to the agencies identified in section 1105.7(b) and/or the appropriate State Historic Preservation Officer(s) and certify to the Commission that it has done this. The form letter contained in the Appendix to this section should be used in transmitting the Environmental and/or Historic Reports.

APPENDIX TO § 1105.11—TRANSMITTAL LETTER FOR APPLICANT'S REPORT

(Carrier Letterhead)

(Addresses)

Re: (Brief description of proposed action with ICC docket number, if available)

(Date)

On (date), we are (or expect to be) filing with the Interstate Commerce Commission a (type of proceeding) seeking authority to () located in (state) (city or town) and (mileposts, if applicable). Attached is an Environmental Report (and/or Historic Report) describing the proposed action and any expected environmental (and/or historic) effects, as well as a map of the affected area.

We are providing this report so that you may review the information that will form the basis for the ICC's independent environmental analysis of this proceeding. If any of the information is misleading or incorrect, if you believe that pertinent information is missing, or if you have any questions about the Commission's environmental review process, please contact the Section of Energy and Environment (SEE), room 3219, Interstate Commerce Commission, Washington, DC 20423, telephone (202) 927-6211 and refer to the above *Docket No.* (if available). Because the applicable statutes and regulations impose stringent deadlines for processing this action, your written comments to SEE (with a copy to our representative) would be appreciated within 3 weeks.

Your comments will be considered by the Commission in evaluating the environmental and/or historic preservation impacts of the contemplated action. If there are any questions concerning this proposal, please contact our representative directly. Our representative in this matter is (name) who may be contacted by telephone at (telephone number) or by mail at (address).

(Complimentary close)

(Name and title of author of letter)

[56 FR 36105, July 31, 1991, as amended at 58 FR 44619, Aug. 24, 1993]

§ 1105.12 Sample newspaper notices for abandonment exemption cases.

In every abandonment exemption case, the applicant shall publish a notice in a newspaper of general circulation in each county in which the line is located and certify to the Commission that it has done this by the date its notice of (or petition for) exemption is filed. The notice shall alert the public to the proposed abandonment, to available reuse alternatives, such as trail use and public use, and to how it may